

1 MORGAN, LEWIS & BOCKIUS LLP
Michael J. Lyons (State Bar No. 202284)
2 Andrew J. Wu (State Bar No. 214442)
David V. Sanker (State Bar No. 251260)
3 2 Palo Alto Square
3000 El Camino Real, Suite 700
4 Palo Alto, CA 94306-2122
Tel: 650.843.4000
5 Fax: 650.843.4001
mlyons@morganlewis.com
6 awu@morganlewis.com
dsanker@morganlewis.com

7 MORGAN, LEWIS & BOCKIUS LLP
8 Daniel Johnson, Jr. (State Bar No. 57409)
Amy M. Spicer (State Bar No. 188399)
9 One Market, Spear Street Tower
San Francisco, CA 94105-1126
10 Tel: 415.442.1000
Fax: 415.442.1001
11 djjohnson@morganlewis.com
aspicer@morganlewis.com

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13 Attorneys for Defendant
14 PHILIPS LUMILEDS LIGHTING COMPANY, LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 EPISTAR CORPORATION,
19 Plaintiff,

20 v.

21 PHILIPS LUMILEDS LIGHTING
COMPANY, LLC,
22 Defendant.
23

Case No. C 07-5194 CW

**PHILIPS LUMILEDS LIGHTING
COMPANY LLC'S ANSWER AND
COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

24
25
26 Defendant Philips Lumileds Lighting Company, LLC ("Lumileds") answers the complaint
27 of plaintiff Epistar Corporation ("Epistar") as follows:
28

1 Lumileds denies each and every allegation contained in the complaint, except as
2 specifically admitted or explained herein.

3 1. In response to paragraph 1 of the complaint, Lumileds denies each and every
4 allegation contained in paragraph 1.

5 2. In response to paragraph 2 of the complaint, Lumileds admits that the complaint
6 seeks an injunction and damages. Lumileds denies any and all remaining allegations in paragraph
7 2.

8 **PARTIES**

9 3. Lumileds lacks sufficient knowledge or information to admit or deny the
10 allegations in paragraph 3.

11 4. In response to paragraph 4 of the complaint, Lumileds admits that it is a
12 corporation duly incorporated in the State of Delaware with its principal place of business in San
13 Jose, California.

14 **JURISDICTION AND VENUE**

15 5. In response to paragraph 5 of the complaint, Lumileds denies that Epistar has any
16 cause of action against Lumileds, under the laws of the United States or the laws of California.
17 Lumileds admits that Epistar purports to state a cause of action arising under the laws of the
18 United States, including 15 U.S.C. § 1051 *et seq.*, and under the laws of California. Lumileds
19 denies that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C.
20 § 1338(b), or 28 U.S.C. § 1367. Lumileds admits that complete diversity of citizenship exists
21 between the parties, but lacks sufficient knowledge or information to admit or deny that the
22 amount in controversy relating to Epistar's claims exceeds \$75,000, exclusive of interest and
23 costs, and on that basis, denies that the Court has subject matter jurisdiction pursuant to 28 U.S.C.
24 § 1332, 28 U.S.C. § 2201, or 28 U.S.C. § 2202. Lumileds denies any and all remaining
25 allegations of paragraph 5 of the complaint.

26 6. In response to paragraph 6 of the complaint, Lumileds admits, for the purpose of
27 this action only, that the Court has personal jurisdiction over Lumileds. Lumileds denies any and
28 all remaining allegations of paragraph 6 of the complaint.

7. In response to paragraph 7 of the complaint, Lumileds admits, for the purpose of this action only, that venue is proper in this judicial district. Lumileds admits that it markets, offers for sale, and/or sells products and services to customers who reside in or may be found in this judicial district. Lumileds admits that it resides in and has headquarters in Santa Clara County and in this judicial district. Lumileds denies any and all remaining allegations in paragraph 7 of the complaint.

BACKGROUND

8. In response to paragraph 8 of the complaint, Lumileds admits that United Epitaxy Company (“UEC”) filed suit against Lumileds, Hewlett-Packard Co., and Agilent Technologies, Inc. in September 1999, seeking a declaratory judgment that UEC’s products did not infringe U.S. Patent No. 5,008,718 (“the ‘718 patent”) and that the ‘718 patent was invalid. Lumileds admits that it counterclaimed against UEC for infringement of the ‘718 patent. Lumileds admits that the case, together with the counterclaims, was styled *United Epitaxy Co., Ltd. v. Hewlett-Packard Co., Agilent Technologies, Inc., and Lumileds Lighting US, LLC*, No. C 00-2518 CW (PVT) (N.D. Cal. 1999). Lumileds admits that Lumileds and UEC settled the litigation on August 30, 2001. Lumileds admits that when the litigation settled, there were three agreements: a Stipulated Consent Judgment, a Settlement Agreement and Mutual Release (“the UEC/Lumileds Settlement Agreement”), and a Patent License Agreement (“the UEC/Lumileds Patent License Agreement”). Lumileds admits that the UEC/Lumileds Patent License Agreement required UEC to pay royalties to Lumileds under certain circumstances on certain absorbing substrate LED products. Lumileds denies any and all remaining allegations in paragraph 8 of the complaint.

9. In response to paragraph 9 of the complaint, Lumileds admits that on January 6, 2003, in response to a lawsuit filed by Lumileds, Epistar filed a complaint against Lumileds seeking a declaratory judgment that Epistar’s products did not infringe the ‘718 patent and that the ‘718 patent was invalid. Lumileds admits that the case was styled *Epistar Corp. v. Lumileds Lighting US, LLC*, No. CV 03-0084 ABC (JWJx) (C.D. Cal. 2003). Lumileds admits that on February 3, 2003, Lumileds amended its pending suit against Citizen Electronics Co., Ltd. and Cecol, Inc., styled *Lumileds Lighting US, LLC v. Citizen Electronics Co., Ltd.*, No. C 02-5077 JW

(N.D. Cal. 2002), to add Epistar as a defendant and include allegations that Epistar was infringing the '718 patent. Lumileds admits that Epistar's declaratory judgment action filed in the Central District of California was transferred to the Northern District of California and consolidated with Case No. C 02-5077 filed by Lumileds. Lumileds admits that after the consolidation of the two cases, the consolidated case was styled *Lumileds Lighting US, LLC v. Epistar Corporation*, Nos. C 02-5077 and C 03-1130 CW (PVT) (N.D. Cal.). Lumileds admits that on June 30, 2004, Epistar and Lumileds entered into a Settlement Agreement settling that litigation ("Epistar/Lumileds Settlement Agreement"). Lumileds admits that the Epistar/Lumileds Settlement Agreement includes a covenant not to sue Epistar for infringement of the '718 patent based on specific Epistar Omnidirectional Mirror Adhesive ("OMA") products, namely products that have product numbers ES-SAYL812, ES-SAHR812, ES-SASO812, ES-SAYL814, ES-SAHR814, ES-SASO814, ES-SAYL822, ES-SAHR822, ES-SASO822, ES-SAYL830, ES-SAHR830, ES-SASO830, ES-SAYL840, ES-SAHR840 and ES-SASO840; however, the covenant does not apply, expressly, by implication, estoppel, or otherwise, to any new Epistar OMA product that is colorably different from these OMA Products regardless of whether such different OMA product is referred to by a product number or designation included in those listed above. Lumileds admits that the Epistar/Lumileds Settlement Agreement includes a license to Epistar under the '718 patent to make, sell, use, offer for sale, and import AlGaInP absorbing-substrate LEDs. Lumileds denies any and all remaining allegations in paragraph 9 of the complaint.

10. In response to paragraph 10 of the complaint, Lumileds admits that Epistar and UEC entered into a merger agreement; however, Lumileds lacks sufficient knowledge or information regarding the merger to admit or deny the allegations in paragraph 10. Lumileds denies any and all remaining allegations in paragraph 10 of the complaint.

11. In response to paragraph 11 of the complaint, Lumileds admits that on November 4, 2005, Lumileds filed a complaint with the International Trade Commission ("ITC") asserting that Epistar and UEC were in violation of Section 337 of the Tariff Act of 1930 "by importing into the United States, selling for importation, or selling within the United States after importation

certain high-brightness light-emitting diodes (“LEDs”) and products containing same that infringe one or more of the claims of Lumileds’ U.S. Patent Nos. 5,008,718 (“the ‘718 patent”), 5,376,580 (“the ‘580 patent”), and 5,502,316 (“the ‘316 patent”).” Lumileds admits that Epistar was one of the respondents in the ITC complaint filed by Lumileds. Lumileds admits that the ITC instituted an investigation styled *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, Investigation No. 337-TA-556. Lumileds admits that during the ITC investigation Lumileds alleged that the specific Epistar products designated as OMA I and OMA II infringed the ‘718 patent. Lumileds admits that the ITC entered a Final Determination, finding that Epistar’s OMA I and OMA II (as well as its MB I, MB II, GB I, and GB II) products infringe the ‘718 patent and entered a limited exclusion order precluding Epistar from importing its OMA I and OMA II LEDs into the United States. Lumileds admits that the Final Determination of the ITC is currently on appeal. Lumileds denies any and all remaining allegations in paragraph 11 of the complaint.

12. Lumileds denies each and every allegation contained in paragraph 12 of the complaint.

13. In response to paragraph 13 of the complaint, Lumileds admits that it has asserted that royalties and late payment penalties are due under the UEC/Lumileds Patent License Agreement based on absorbing-substrate products made by Epistar and that it is entitled to audit Epistar for Epistar’s activities since December 30, 2005, under the UEC/Lumileds Patent License Agreement. Lumileds denies any and all remaining allegations in paragraph 13 of the complaint.

FIRST CAUSE OF ACTION

(Unfair Competition under the Lanham Act)

14. In response to paragraph 14 of the complaint, Lumileds realleges and incorporates by reference the answers stated in paragraphs 1 through 13 above.

15. In response to paragraph 15 of the complaint, Lumileds admits that Epistar and Lumileds are competitors in the business of manufacturing and selling LED products.

16. Lumileds denies each and every allegation contained in paragraph 16 of the complaint.

17. Lumileds denies each and every allegation contained in paragraph 17.

18. Lumileds denies each and every allegation contained in paragraph 18.

19. Lumileds denies each and every allegation contained in paragraph 19.

20. Lumileds denies each and every allegation contained in paragraph 20.

SECOND CAUSE OF ACTION

(Breach of Contract)

21. In response to paragraph 21 of the complaint, Lumileds realleges and incorporates by reference the answers stated in paragraphs 1 through 20 above.

22. In response to paragraph 22 of the complaint, Lumileds admits that the Epistar/Lumileds Settlement Agreement includes a covenant not to sue Epistar for infringement of the specific OMA products with product numbers ES-SAYL812, ES-SAHR812, ES-SASO812, ES-SAYL814, ES-SAHR814, ES-SASO814, ES-SAYL822, ES-SAHR822, ES-SASO822, ES-SAYL830, ES-SAHR830, ES-SASO830, ES-SAYL840, ES-SAHR840 and ES-SASO840; however, the covenant does not apply, expressly, by implication, estoppel, or otherwise, to any new Epistar OMA product that is colorably different from these OMA Products regardless of whether such different OMA product is referred to by a product number or designation included in those listed above. Lumileds denies any and all remaining allegations in paragraph 22 of the complaint.

23. Lumileds denies each and every allegation contained in paragraph 23.

24. In response to paragraph 24 of the complaint, Lumileds admits that it filed a complaint with the ITC and named Epistar as a respondent. Lumileds admits that in the ITC complaint, Lumileds alleged that Epistar's OMA products infringed certain Lumileds' patents. Lumileds denies that Epistar's current OMA products are covered by the covenant not to sue in the Epistar/Lumileds Settlement Agreement. Lumileds admits that the ITC entered a limited exclusion order precluding Epistar from importing its OMA I or OMA II LEDs into the United States. Lumileds admits that the ITC found that Epistar's OMA I and OMA II products infringe the '718 patent. Lumileds denies any and all remaining allegations in paragraph 24 of the complaint.

1 25. Lumileds denies each and every allegation contained in paragraph 25.

2 26. Lumileds denies each and every allegation contained in paragraph 26.

3 27. Lumileds denies each and every allegation contained in paragraph 27.

4 28. Lumileds denies each and every allegation contained in paragraph 28.

5 **THIRD CAUSE OF ACTION**

6 **(Intentional Interference with Prospective Economic Advantage)**

7 29. In response to paragraph 29 of the complaint, Lumileds realleges and incorporates
8 by reference the answers stated in paragraphs 1 through 28 above.

9 30. Lumileds denies each and every allegation contained in paragraph 30.

10 31. In response to paragraph 31 of the complaint, Lumileds lacks sufficient knowledge
11 or information to admit or deny that Epistar had existing and prospective business relationships
12 with numerous customers. Lumileds denies any and all remaining allegations in paragraph 31 of
13 the complaint.

14 32. In response to paragraph 32 of the complaint, Lumileds lacks sufficient knowledge
15 or information to admit or deny that there was a reasonable probability of future economic benefit
16 from Epistar's existing and prospective business relationships with these customers. Lumileds
17 denies any and all remaining allegations in paragraph 32 of the complaint.

18 33. Lumileds denies each and every allegation contained in paragraph 33.

19 34. Lumileds denies each and every allegation contained in paragraph 34.

20 35. Lumileds denies each and every allegation contained in paragraph 35.

21 36. Lumileds denies each and every allegation contained in paragraph 36.

22 37. Lumileds denies each and every allegation contained in paragraph 37.

23 **FOURTH CAUSE OF ACTION**

24 **(Unfair Competition Cal. Bus. & Prof. Code § 17200)**

25 38. In response to paragraph 38 of the complaint, Lumileds realleges and incorporates
26 by reference the answers stated in paragraphs 1 through 37 above.

27 39. Lumileds denies each and every allegation contained in paragraph 39.

28 40. Lumileds denies each and every allegation contained in paragraph 40.

1 41. Lumileds denies each and every allegation contained in paragraph 41.

2 **FIFTH CAUSE OF ACTION**

3 **(Declaratory Relief)**

4 42. In response to paragraph 42 of the complaint, Lumileds realleges and incorporates
5 by reference the answers stated in paragraphs 1 through 41 above.

6 43. In response to paragraph 43 of the complaint, Lumileds admits that on August 30,
7 2001, UEC and Lumileds entered into the UEC/Lumileds Patent License Agreement. Lumileds
8 admits UEC and Epistar merged in December 2005, and that Epistar assumed UEC's contractual
9 obligations through the merger. Lumileds denies any and all remaining allegations in paragraph
10 43 of the complaint.

11 44. In response to paragraph 44 of the complaint, Lumileds admits that Epistar is
12 subject to the Epistar/Lumileds Settlement Agreement as well as the UEC/Lumileds Patent
13 License Agreement. Lumileds denies any and all remaining allegations in paragraph 44 of the
14 complaint.

15 45. In response to paragraph 45 of the complaint, Lumileds admits that it has asserted
16 that Epistar is obligated to pay royalties, make semi-annual royalty reports, make late payments,
17 and submit to audits pursuant to the UEC/Lumileds Patent License Agreement for absorbing
18 substrate LED products that Epistar makes and sells. Lumileds admits that an actual and
19 justiciable case or controversy exists between Plaintiff on the one hand and Lumileds on the
20 other.

21 46. Lumileds denies each and every allegation contained in paragraph 46.

22 **AFFIRMATIVE AND OTHER DEFENSES**

23 Further answering the complaint, Lumileds asserts the following defenses. Lumileds
24 reserves the right to amend its answer with additional defenses as further information is obtained.

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Failure to State a Claim)**

27 47. Epistar's complaint fails to state a claim against Lumileds upon which relief may
28 be granted.

SECOND AFFIRMATIVE DEFENSE

(Unjust Enrichment)

48. Epistar's claims are barred in whole or in part because Epistar would be unjustly enriched if allowed to benefit from its conduct and thus recover any of the relief sought in its claim for damages.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

49. Epistar's claims are barred in whole or in part by the doctrine of unclean hands because Epistar engaged in unfair, deceptive, and injurious conduct relating to matters alleged in Epistar's complaint.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

50. Epistar's complaint is barred in whole or in part by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

51. Epistar has, by its conduct and inaction, and both expressly and impliedly, waived and abandoned any and all claims it now purports to assert against Lumileds in Epistar's complaint.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

52. By virtue of Epistar's acts, conduct, and/or omissions, Epistar is estopped from asserting that it is entitled to any recovery with respect to any of the purported claims alleged in Epistar's complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Judicial Estoppel)

53. By virtue of admissions and statements made by Epistar before this Court and the ITC, by virtue of rulings issued by this Court and the ITC, Epistar is estopped from asserting that it is entitled to any recovery with respect to any of the purported claims alleged in Epistar's

1 complaint.

2 **EIGHTH AFFIRMATIVE DEFENSE**

3 **(Res Judicata / Collateral Estoppel)**

4 54. Epistar's claims are barred in whole or in part by the doctrines of res judicata
5 and/or collateral estoppel.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Full Performance of Obligations by Lumileds / Failure of Performance by Epistar)**

8 55. Epistar's claims are barred in whole or in part because Lumileds duly performed,
9 satisfied, and/or discharged all duties and obligations it may have owed to Epistar arising out of
10 any contract between Epistar and Lumileds. Alternatively, the actions of Epistar, including its
11 breach of contract, prevented and excused performance by Lumileds.

12 **TENTH AFFIRMATIVE DEFENSE**

13 **(Excuse)**

14 56. At all times and places alleged in Epistar's complaint, Lumileds performed and
15 discharged each and every obligation owed to Epistar, if any, except such obligations as Lumileds
16 was excused from performing as a result of Epistar's conduct and failure to properly perform its
17 obligations.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Lack of Causation)**

20 57. Epistar's complaint is barred in whole or in part because the alleged damage to
21 Epistar was not proximately caused by the alleged wrongful acts of Lumileds.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(License and Authorization)**

24 58. To the extent that any authorization is required from Lumileds to assign or transfer
25 the rights, duties, and obligations contained in the UEC/Lumileds Patent License Agreement from
26 UEC to Epistar following the merger of UEC and Epistar, authorization was provided based on
27 the conduct of the parties, including admissions and statements made before the ITC, and such
28 authorization continues on an on-going basis.

THIRTEENTH AFFIRMATIVE DEFENSE

(Epistar's Bad Faith)

59. As a separate and additional affirmative defense to Epistar's complaint, and each and every cause of action alleged therein, Lumileds asserts that Epistar's complaint is barred in whole or in part because Epistar is prosecuting its claims in bad faith and for an improper purpose. Epistar's claims are frivolous and entitle Lumileds to an award of attorneys' fees and costs.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Injury/Damages)

60. Each cause of action is barred in whole or in part because Epistar has not suffered any injury or damage as a result of any action taken by Lumileds, and thus Epistar is barred from asserting any causes of action against Lumileds.

FIFTEENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

61. Epistar is not entitled to equitable relief because the injury or damage suffered by Epistar, if any, would be adequately compensated in an action for law or damages.

COUNTERCLAIMS

PARTIES

1. Lumileds is a Delaware corporation in good standing with its principal place of business at 370 West Trimble Road, San Jose, California, 95131.

2. Epistar is a foreign corporation organized under the laws of Taiwan with its principal place of business in Hsinchu, Taiwan.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the Lumileds and Epistar and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. This Court has personal jurisdiction over Epistar because Epistar has availed itself of the jurisdiction of this Court by filing its complaint. This Court additionally has personal

1 jurisdiction over Epistar because Epistar has engaged in sufficient contacts with the State of
2 California to satisfy both the requirements of due process and Rule 4(k)(2) of the Federal Rules of
3 Civil Procedure, including by participating in previous lawsuits in this judicial district before this
4 Court, and by conducting business within this State.

5 5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a) & (c)
6 because a substantial part of the events giving rise to the claims for relief and the conduct that
7 created the controversy between the parties occurred in this district and/or had an effect within
8 this Court's judicial district.

9 **INTRADISTRICT ASSIGNMENT**

10 6. Under Local Rule 3-2(c), a substantial part of the events that give rise to the claims
11 alleged herein occurred in Santa Clara County, in the San Jose Division of this Court. The
12 present action is currently assigned to the San Francisco division.

13 **FIRST COUNTERCLAIM**

14 (Breach of Contract)

15 7. Lumileds realleges and incorporates by reference the allegations stated in
16 paragraphs 1 through 6 of its Counterclaims.

17 8. On September 1, 2001, United Epitaxy Co. ("UEC") and Lumileds entered into a
18 Patent License Agreement (the "UEC/Lumileds Patent License Agreement").

19 9. Pursuant to the UEC/Lumileds Patent License Agreement, UEC promised to pay
20 Lumileds royalties on certain absorbing substrate LED products and promised to submit to an
21 audit upon request by Lumileds in exchange for a license to specified Lumileds intellectual
22 property.

23 10. In December 2005, UEC and Epistar merged. The resulting entity assumed all of
24 the obligations, duties, and benefits of the UEC/Lumileds Patent License Agreement.

25 11. On July 6, 2007, Epistar expressly acknowledged its continuing obligation to pay
26 royalties pursuant to the UEC/Lumileds Patent License Agreement, and certified the royalty due
27 for the period of November 2005 through April 2007. Epistar changed its position regarding this
28 obligation in a letter dated October 10, 2007.

12. Lumileds has complied with all of the terms under the UEC/Lumileds Patent License Agreement and has fulfilled all of its obligations.

13. Epistar has materially breached its continuing obligation and duties under the UEC/Lumileds Patent License Agreement by, *intra alia*, failing to pay the royalties required to date and by failing to allow Lumileds to perform an audit as expressly provided for in the UEC/Lumileds Patent License Agreement.

14. Epistar has breached the express terms of the UEC/Lumileds Patent License Agreement as well as the implied covenant of good faith and fair dealing.

15. As a direct and proximate result of Epistar's breach, Lumileds has been and continues to be injured.

SECOND COUNTERCLAIM

(Unfair Competition Under Cal. Bus. & Prof. Code § 17200 *et seq.*)

16. Lumileds realleges and incorporates by reference the allegations stated in paragraphs 1 through 15 of its Counterclaims.

17. On November 4, 2005, Lumileds filed a complaint with the International Trade Commission ("ITC") asserting a violation of Section 337 of the Tariff Act of 1930 as a result of the importation of certain LED products that infringe Lumileds' patents, including U.S. Patent No. 5,008,718 (the "'718 patent"). Lumileds named Epistar as a respondent. The ITC instituted an investigation styled *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, Investigation No. 337-TA-556. On January 8, 2007, the Administrative Law Judge ("ALJ") of the ITC entered an Initial Determination finding that certain of Epistar's products infringed the '718. The ITC issued an exclusion order, *intra alia*, precluding Epistar from importing its MB and MB II products into the United States.

18. On January 23, 2007, Epistar issued a press release containing several misleading, false, and deceptive material statements regarding the actions taken by the ITC. Included in these misrepresentations are Epistar's statements that "only the older version of [its] MB products" were found to have infringed two claims of the '718 patent – when in actuality, the ALJ found that *both* Epistar's previous MB I design *and* its current MB II design infringe the '718 patent –

1 and that a customer may sidestep an exclusion order on its MB products simply “by stating [in a
2 certification] their understanding that the LEDs do not infringe the ‘718 Patent.”

3 19. Although Lumileds pointed out these inaccuracies to Epistar, Epistar never
4 retracted its January 23, 2007 press release.

5 20. On September 29, 2007, Epistar again issued a press release containing several
6 misleading, false, and deceptive material statements regarding the actions taken by the ITC. Once
7 again, Epistar falsely stated that a customer may sidestep an exclusion order on its MB products
8 simply “by stating [in a certification] their understanding that the LEDs do not infringe the 718
9 Patent.” In addition, Epistar falsely stated that “the U.S. Customs and Border Protection has ruled
10 that [Epistar’s] new Phoenix and Aquarius lines of ultra-bright AlGaInP LEDs are not subject to
11 the Limited Exclusion Order (LEO) issued by the International Trade Commission (ITC).” In
12 actuality, no such ruling had been issued.

13 21. Lumileds again pointed out these inaccuracies on October 5, 2007 and October 11,
14 2007.

15 22. Epistar has never retracted its September 29, 2007 press release, although it did
16 eventually remove the press release from its website.

17 23. By engaging in the above-described acts and practices, Epistar has committed one
18 or more acts of unfair competition within the meaning of California Business & Professions Code
19 § 17200 *et seq.*

20 24. As a direct and proximate result of Epistar’s above-described conduct, acts, and
21 omissions, Lumileds has suffered injury in fact and has lost money or property as a result of such
22 unfair competition and continues to suffer harms, including, but not limited to damage to
23 Lumileds’ business, loss of customers and vendors, and loss of revenues and profits.

24 25. Unless Epistar is enjoined from continuing to engage in the unfair, untrue, and
25 deceptive business acts and practices as described herein, Lumileds will continue to be damaged.

26 26. So as not to be unjustly enriched by its own wrongful conduct, Epistar should be
27 required to provide restitution in the amount of all monies wrongfully obtained by Epistar as a
28 result of its unfair competition.

27. As a direct and proximate result of Epistar's actions, Lumileds has suffered and will continue to suffer irreparable damage to its rights and to its business. Lumileds has no adequate remedy at law against Epistar's wrongful conduct. Epistar has widely disseminated its false, misleading, and deceptive statements, including publication on the World Wide Web. Epistar should be ordered retract its false and misleading statements and should be ordered to issue a court-approved corrective press release. Lumileds is entitled to a preliminary and permanent injunction against Epistar's wrongful and unfair conduct.

PRAYER FOR RELIEF

WHEREFORE, Lumileds prays for the entry of judgment in its favor and against Epistar as follows:

A. Dismissing with prejudice any and all claims of Epistar's complaint and ordering that Epistar take nothing as a result of the complaint;

B. A judgment that Epistar has breached the parties' agreement and award of damages arising from Epistar's breach;

C. For injunctive relief from Epistar's wrongful acts;

D. For damages in an amount to be determined at trial;

E. For interest on its damages at the legal interest rate;

F. Awarding Lumileds its reasonable attorneys' fees, expenses and costs incurred in this action;

G. Granting Lumileds such other action and further relief as this Court may deem just and proper, or that Lumileds may be entitled to as a matter of law or equity.

Dated: December 21, 2007

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Michael J. Lyons

Michael J. Lyons
Attorneys for Defendant
PHILIPS LUMILEDS LIGHTING
COMPANY, LLC

DEMAND FOR JURY TRIAL

Lumileds hereby requests a trial by jury.

Dated: December 21, 2007

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Michael J. Lyons

Michael J. Lyons
Attorneys for Defendant
PHILIPS LUMILEDS LIGHTING
COMPANY, LLC